

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

WASHINGTON MUTUAL BANK, FA,)	
)	Case No. 1:06-CV-00707
Plaintiff,)	
)	JUDGE ANN ALDRICH
v.)	
)	
MICHAEL J. DURBIN, et al.,)	
)	
Defendants.)	<u>ORDER</u>
)	
)	

Before the Court is Washington Mutual Bank, FA's motion for default judgment and decree in foreclosure, to obtain judgment against Michael J. Durbin as described in the complaint, to foreclose the lien of the mortgage securing the obligation of such note upon the real estate described herein, and to require all parties to set up their claims to the real estate or be barred.

The Court finds that:

1. The following defendants are in default of motion or answer:

- a. Michael J. Durbin and
- b. Unknown Spouse, if any, of Michael J. Durbin;
- c. Unknown Tenants, if any, of 3464-66 West 117th Street,
Cleveland, OH 44111;

2. The Clerk's entry of default was filed herein on July 26, 2006.

Accordingly, the Court takes the allegations contained in the complaint as true, including that there is due and owing to the plaintiff from the defendant, Michael J. Durbin, upon the subject note, the principal balance of \$93,312.30, for which judgment is hereby rendered in favor of the plaintiff, with interest at the rate of 6.5 percent per annum from November 1, 2005. The note is secured by the

mortgage held by the plaintiff, which mortgage constitutes a valid and subsisting lien upon the following described premises:

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio: and known as being Sublot No. 27 in Crawford Land Company's Subdivision No. 1 of part of Original Rockport Township Section No. 11, as shown by the recorded plat in Volume 60 of Maps, page 8 of Cuyahoga County Records and being 40 feet front on the Westerly side of West 117th Street, and extending back between parallel lines 105 feet, as appears by said plat, be the same more or less, but subject to all legal highways.

Parcel Number: 018-04-182

Commonly known as: 3464-66 West 117th Street, Cleveland, Ohio

Taking as true the allegations contained in plaintiff's complaint, the Court finds that the mortgage was filed for record on August 30, 2002, and recorded as Instrument Number 200208300174 in the Cuyahoga County Recorder's Office; that the mortgage, together with the note, was assigned to the plaintiff by an assignment of mortgage filed for record on June 5, 2006 as Instrument Number 200606050072 in the Cuyahoga County Recorder's Office; that the conditions of said mortgage have been broken; and that plaintiff is entitled to have the equity of redemption of the defendant-titleholder foreclosed.

The Court finds that defendant Home Equity of America, Inc., claims some right, title, interest, or lien upon the premises described herein, and has set forth its claims in its pleadings filed herein, but that any right, title, interest, or lien that it may have is inferior and subsequent to the lien of the plaintiff.

The Court makes no finding as to the right, title, interest, or lien of said defendant as set forth in its pleadings filed herein, except to note that, by agreement of the parties, such right, title, interest, or lien of the above named defendant is hereby ordered transferred to the proceeds derived from the sale of said premises, after the payment of the costs of the within action, taxes due and payable and the amount herein above found due to the plaintiff, and the same are hereby ordered to continue until further

order from the court.

It is therefore ordered, that unless the sums herein above found to be due to plaintiff Washington Mutual Bank, FA, and the costs of this action, be fully paid within ten (10) days from the date of the entry of this decree, the equity of redemption of the defendant-titleholder in said real estate shall be foreclosed and the real estate sold, free and clear of the interest of all parties herein,

IT IS SO ORDERED.

/s/Ann Aldrich
ANN ALDRICH
UNITED STATES DISTRICT JUDGE

Dated: November 17, 2006